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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/821,820	03/29/2001	John Sabat JR.	3176.1001-001	6213
34206 7590 02/21/2007 FOGG & POWERS LLC 10 SOUTH FIFTH STREET SUITE 1000 MINNEAPOLIS, MN 55402			EXAMINER PRIETO, BEATRIZ	
			ART UNIT 2142	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE			MAIL DATE	DELIVERY MODE
3 MONTHS			02/21/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

09/821,820

Applicant(s)

SABAT ET AL.

Examiner

Prieto B.

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 November 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-14 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

BP

***DETAILED ACTION***

1. In view of the Appeal Brief filed on 11/13/06, PROSECUTION IS HEREBY REOPENED. New ground of rejection set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below.

2. Claims 1-14 are allowed.

3. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and/or MPEP § 707.07(a).

***Rejection under 35 USC 101***

4. Claim 1 is rejected on the ground of nonstatutory double patenting over claim 15 of US Patent No. 6,963,552 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent '552.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application, which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claims rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 15 of US Patent No. 6,963,552 in view of Bhame et. al. US 5,880,701.

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Claim 1 of instant application is substantially the same as claim 15 of the patent '552.

In this case, the machine claim 1 of instant application contains substantially the same subject matter as claim 15 of the patent '552. Namely, co-located first and second base stations, the conversion of radio frequency signals transmitted by the first and second base stations, radio access nodes, each radio access node associated with a portion of a total system coverage area, and each radio access node coupled to receive signals from a transport medium, with each radio access node containing at least a first and second slice module associated with the respective first and second tenant base stations. The difference is that instant application further includes that the base stations are operated by a first and second wireless communication service provider having a respective management system and a system (called common network management) forwards messages from these management system to the radio access nodes, specifically to slice modules associated with respective ones of the radio access nodes. However, different service providers each managing/controlling individually radio access nodes was known at the time the invention was made.

Bhame discloses as prior art where different wireless telecommunications service providers to co-locate multiple radio access nodes, i.e. antenna towers, for reducing the number of such towers needed to service a given market area, the system allows for each service provider to independently manage their respective antennas, to adjust their respective component, particularly, antenna panels for optimal signal transmission and reception without interfering with the antenna panels of the other co-located service providers (column 1, lines 5-17). Bhame discloses that with the advent of personal communication systems (PCS), there will be a significant increase in the number of transceiver sites located in each market area. The operating frequencies of personal communication systems (PCS), between 1850 and 1990 MHz, require two to four transceiver sites to cover the same area currently serviced by a single cellular transceiver site. Additionally, it is expected that each market area will be serviced by two to four times as many PCS providers as it is currently by cellular service providers. Clearly, if each PCS provider establishes a proprietary PCS transceiver network, the number of transceiver sites in a community will increase significantly (column 1, lines 39-50).

It would have be obvious at the time the invention was made given the disclosure of Bhame for allows for each service provider to independently manage their respective antennas, particularly, their respective component thereon, associated with signal transmission and reception without interfering with the antenna panels of the other co-located service providers. One of ordinary skill in the art would be motivated allows for each service provider to independently manage their respective antennas components, such as those associated with the operating frequencies allocated to respective service

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providers, to adjust and configure the corresponding transceiver sites components to cover a desired area according to that particular allocated channel frequency associated with respective signal transmission and reception components without interfering with the components of the other co-located service providers, reducing the number of transceiver sites through co-location, i.e. allowing multiple wireless service providers to located their antenna equipment on a common tower.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Prieto, B. whose telephone number is (571) 272-3902. The Examiner can normally be reached on Monday-Thursday from 5:30 to 2:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's Supervisor, Andrew T. Caldwell can be reached at (571) 272-3868. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3800/4700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system, status information for published application may be obtained from either Private or Public PAIR, for unpublished application Private PAIR only (see <http://pair-direct.uspto.gov> or the Electronic Business Center at 866-217-9197 (toll-free).

Any response to this action should be mailed to:  
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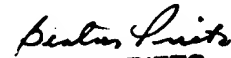
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B. Prieto  
Primary Examiner  
February 17, 2007

  
ANDREW CALDWELL  
SUPERVISORY PATENT EXAMINER

  
BEATRIZ PRIETO  
PRIMARY EXAMINER